U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 33254396

Date: OCT. 9, 2024

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (Extraordinary Ability)

The Petitioner seeks classification as an individual of extraordinary ability in energy efficiency. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Nebraska Service Center denied the petition, concluding the Petitioner did not satisfy at least three of the initial evidentiary criteria and did not show his intent to continue to work in his area of expertise in the United States. The matter is now before us on appeal. 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

I. LAW

Section 203(b)(1)(A) of the Act makes visas available to immigrants with extraordinary ability if:

> (i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,
>
> (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and
>
> (iii) the alien's entry into the United States will substantially benefit prospectively the United States.

The term "extraordinary ability" refers only to those individuals in "that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). The implementing regulation at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner can demonstrate sustained acclaim and the recognition of achievements in the field through a one-time achievement (that is, a major, internationally recognized award) or qualifying documentation that meets at least three of the ten categories listed at 8 C.F.R. § 204.5(h)(3)(i) – (x) (including items such as awards, published material in certain media, and scholarly articles).

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); *see also Visinscaia v. Beers*, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013); *Rijal v. USCIS*, 772 F. Supp. 2d 1339 (W.D. Wash. 2011).

II. ANALYSIS

Because the Petitioner has not indicated or established he has received a major, internationally recognized award, he must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). The Director concluded the Petitioner did not fulfill any of the claimed evidentiary criteria. On appeal, the Petitioner maintains his qualification for five.[1] For the reasons discussed below, the Petitioner did not demonstrate he meets at least three categories of evidence.

> *Published material about the alien in professional or major trade publications or other major media, relating to the alien's work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation.* 8 C.F.R. § 204.5(h)(3)(iii).

USCIS first determines whether the published material was related to the person and the person's specific work in the field for which classification is sought.[2] USCIS then determines whether the publication qualifies as a professional publication, major trade publication, or other major media publication.[3]

The Petitioner argues that his submission of two articles published in *Energy Saving*, and subsequently posted on the publication's website abok.ru, qualifies for this criterion. The [redacted] 2023 article reflects published material about the Petitioner relating to his work with his company, [redacted]

[1] Issues and prior eligibility claims not raised on appeal are waived. *See, e.g., Matter of O-R-E-*, 28 I&N Dec. 330, 336 n.5 (BIA 2021) (citing *Matter of R-A-M-*, 25 I&N Dec. 657, 658 n.2 (BIA 2012)).
[2] *See generally* 6 USCIS Policy Manual F.2(B)(1), https://www.uscis.gov/policymanual.
[3] *Id.*

[redacted].[4] However, the Petitioner did not establish that *Energy Saving* or abok.ru constitutes a professional or major trade publication or other major medium.[5]

The Petitioner provided a letter from A-G-Z-, general director of [redacted] who indicated that *Energy Saving* is "[a] professional industry journal whose audience consists of two categories: consumers and manufacturers of energy-saving equipment and technologies," and "[t]he circulation of the journal is 13,000 copies." The regulation at 8 C.F.R. § 204.5(h)(3)(iii) does not define a "professional publication." However, the term "profession" shall include shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academics, or seminaries. *See* section 101(a)(32) of the Act. Moreover, "profession" means one of the occupations listed in section 101(a)(32) of the Act, as well as any occupation for which a United States baccalaureate degree or its foreign equivalent is the minimum requirement for entry in the occupation. *See* 8 C.F.R. § 204.5(k)(2). Here, the Petitioner did not show that *Energy Saving's* audience is geared more towards professionals in the field rather than "consumers and manufactures."

Furthermore, although A-G-Z- claimed *Energy Saving* is a professional industry journal, the letter does not contain sufficient information showing the professional status of *Energy Saving*. In fact, the letter discusses a wide range topics of "production, supply, installation, commissioning of energy and resource-saving equipment, as well as progressive energy-saving solutions and all products related to the energy saving process," indicating more of a trade publication rather than a professional publication. Without further evidence, the Petitioner has not shown the professional standing of *Energy Saving*.

In addition, A-G-Z- claimed that *Energy Saving's* circulation reached 13,000. However, the Petitioner did not provide further evidence or information demonstrating the significance or relevance of this figure to establish that *Energy Saving* represents a major trade publication or other major medium. Finally, the Petitioner did not offer any supporting evidence or traffic data relating to abok.ru to show the major standing of the website.

For these reasons, the Petitioner did not establish he meets this criterion.

> *Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field.* 8 C.F.R. § 204.5(h)(3)(v).

In order to satisfy the regulation at 8 C.F.R. § 204.5(h)(3)(v), USCIS determines whether the person has made original contributions in the field.[6] USCIS then determines whether the original contributions are of major significance to the field.[7] Examples of relevant evidence include, but are not limited to: published materials about the significance of the person's original work; testimonials, letters, and affidavits about the persons original work; documentation that the person's original work

[4] The June 2023 article does not represent published material about the Petitioner rather than coverage about [redacted]

[5] *See generally* 6 *USCIS Policy Manual*, *supra*, at F.2(B)(1) (in evaluating whether a submitted publication is a professional publication, major trade publication, or major media, relevant factors include the intended audience (for professional and major trade publications) and the relative circulation, readership, or viewership (for major trade publications and other major media).

[6] *See generally* 6 USCIS Policy Manual, *supra*, at F.2(B)(1).

[7] *Id.*

was cited at a level indicative of major significance in the field; and patents or licenses deriving from the person's work or evidence of commercial use of the person's work.[8]

On appeal, the Petitioner argues:

> I have submitted vast and numerous evidence that stress out that I have original scientific and business-related contributions of major significance in the field that [sic] been very influential and field-changing, and that have gathered [sic] both national and international acclaim among industry experts, market peers and various consumers. It is reinforced not only by a plethora of letters and testimonials, but as well by contracts that underline incredible trust from customers – leaders in their industrial leaders when handling us what we do the best. My track record in the field has been referenced by experts as authoritative, has received notice from others indicating "major significance level" in the overall field of energy efficiency.

The evidence referenced by the Petitioner, such as letters, testimonials, and contracts, indicates the Petitioner's involvement in conducting business between [redacted] and other companies. However, the evidence does not show that such involvement rises to a level of major significance in the field. The significance of the Petitioner's contributions has been limited to the projects in which [redacted] conducted business rather than impacting or influencing the overall field in a major way. *See Visinscaia*, 4 F. Supp. 3d at 134-35 (upholding a finding that a ballroom dancer had not met this criterion because she did not corroborate her impact in the field as a whole). For instance, "[y]our expertise in the field of lightning design and supply provided invaluable for this project of significant complexity" (I-I-K- letter); "[y]our expertise has been pivotal in the selection and implementation of our products for several high-profile projects" (A-V-U- letter); and "[t]he methodology pioneered by [the Petitioner] and [redacted] in implementing lighting system projects has been a key factor in our success" (A-S-F- letter).[9] Although the letters praise the projects in which they worked with the Petitioner and [redacted] they not further elaborate and explain how those engagements translated into contributions of major significance in the field.[10]

Detailed letters from experts in the field explaining the nature and significance of the person's contribution may also provide valuable context for evaluating the claimed original contributions of major significance, particularly when the record includes documentation corroborating the claimed significance.[11] Submitted letters should specifically describe the person's contribution and its significance to the field and should also set forth the basis of the writer's knowledge and expertise.[12] In this case, the letters lack specific, detailed information explaining how the Petitioner has made original contributions of major significance in the field. USCIS need not accept primarily conclusory statements. *1756, Inc. v. The U.S. Att'y Gen.*, 745 F. Supp. 9, 15 (D.C. Dist. 1990).

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[8] *Id.*

[9] Although we discuss a sampling of letters and testimonials, we have reviewed and considered each one in the record.

[10] *See generally* 6 USCIS Policy Manual, *supra*, at F.2(B)(1) (analysis under this criterion focuses on whether the person's original work constitutes major, significant contributions in the field).

[11] *See generally* 6 USCIS Policy Manual, *supra*, at F.2(B)(1).

[12] *Id.*

For the reasons discussed above, considered both individually and collectively, the Petitioner has not shown he has made original contributions of major significance in the field.

> *Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation.* 8 C.F.R. § 204.5(h)(3)(viii)

The petitioner must establish performance in a leading or critical role for an organization, establishment, or division or department of an organization or establishment, and the petitioner must demonstrate whether the organization or establishment, or the department or division for which the person holds or held a leading or critical role, has a distinguished reputation.[13]

The Petitioner provided evidence showing that he performed in a leading or critical role for [redacted] However, the Petitioner did not demonstrate that [redacted] enjoys a distinguished reputation. On appeal, the Petitioner asserts that "[n]umerous appreciation letters from experts in the fields, customers, peers, government agencies, suppliers and many other references, support [the] distinguished reputation of [redacted] []."

Similar to the issues regarding the letters discussed under the original contributions criterion, the record reflects the letters lack specific, detailed information demonstrating the distinguished reputation of [redacted] Instead, the letters briefly indicate or repeat the regulatory language and claim that [redacted] has a distinguished reputation without explaining, elaborating, or supporting their assertions. For instance, [redacted] [] distinguishes itself by its unique approach, competing favorably with some of the world's most renowned companies such as Philips and iGuzzini Illuminazione" (D-G-Z- letter), and [redacted] [] has distinguished itself as a leader in the industry, not only through the success of its projects but also through its commitment to innovation and excellence" (A-S-F- letter). Here, the letters do not elaborate and show how it has competed against other energy companies or how the success of its projects has distinguished itself as a leader. Without further evidence or corroborating documentation, the Petitioner has not shown the distinguished reputation of [redacted]

Furthermore, for the first time on appeal, the Petitioner asserts eligibility and submits new evidence for this criterion based on his role with [redacted] Because the Petitioner was put on notice and given a reasonable opportunity to claim eligibility and provide this evidence, we will not consider this claim and documentation for the first time on appeal. *See* 8 C.F.R. § 103.2(b)(11) (requiring all requested evidence be submitted together at one time); *Matter of Soriano*, 19 I&N Dec. 764, 766 (BIA 1988) (declining to consider new evidence submitted on appeal because "the petitioner was put on notice of the required evidence and given a reasonable opportunity to provide it for the record before the denial").

For the reasons discussed above, the Petitioner did not demonstrate he satisfies this criterion.

[13] *See generally* 6 USCIS Policy Manual, *supra*, at F.2(B)(1).

III. CONCLUSION

The Petitioner did not establish he satisfies three categories of evidence. Although the Petitioner also argues eligibility for the judging criterion under 8 C.F.R. § 204.5(h)(3)(iv) and the scholarly articles criterion under 8 C.F.R. § 204.5(h)(3)(vi), we need not reach these additional grounds because the Petitioner cannot fulfill the initial evidentiary requirement of three under 8 C.F.R. § 204.5(h)(3). We also need not provide the type of final merits determination referenced in *Kazarian*, 596 F.3d at 1119-20. Accordingly, we reserve these issues.[14]

Nevertheless, we have reviewed the record in the aggregate, concluding it does not support a conclusion that the Petitioner has established the acclaim and recognition required for the classification sought. The Petitioner seeks a highly restrictive visa classification, intended for individuals already at the top of their respective fields, rather than those progressing toward the top. *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994) (concluding that even major league level athletes do not automatically meet the statutory standards for classification as an individual of "extraordinary ability,"); *Visinscaia*, 4 F. Supp. 3d at 131 (internal quotation marks omitted) (finding that the extraordinary ability designation is "extremely restrictive by design,"); *Hamal v. Dep't of Homeland Sec. (Hamal II)*, No. 19-cv-2534, 2021 WL 2338316, at *5 (D.D.C. June 8, 2021), *aff'd*, 2023 WL 1156801 (D.C. Cir. Jan. 31, 2023) (determining that EB-1 visas are "reserved for a very small percentage of prospective immigrants"). *See also Hamal v. Dep't of Homeland Sec. (Hamal I)*, No. 19-cv-2534, 2020 WL 2934954, at *1 (D.D.C. June 3, 2020) (citing *Kazarian,* 596 at 1122 (upholding denial of petition of a published theoretical physicist specializing in non-Einsteinian theories of gravitation) (stating that "[c]ourts have found that even highly accomplished individuals fail to win this designation")); *Lee v. Ziglar*, 237 F. Supp. 2d 914, 918 (N.D. Ill. 2002) (finding that "arguably one of the most famous baseball players in Korean history" did not qualify for visa as a baseball coach). Here, the Petitioner has not shown the significance of his work is indicative of the required sustained national or international acclaim or it is consistent with a "career of acclaimed work in the field" as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990); *see also* section 203(b)(1)(A) of the Act. Moreover, the record does not otherwise demonstrate the Petitioner has garnered national or international acclaim in the field, and he is one of the small percentage who has risen to the very top of the field of endeavor. *See* section 203(b)(1)(A) of the Act and 8 C.F.R. § 204.5(h)(2). The record does not contain sufficient evidence establishing the Petitioner among the upper echelon in his field.

For the reasons discussed above, the Petitioner has not demonstrated his eligibility as an individual of extraordinary ability.[15] The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

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[14] *See INS v. Bagamasbad*, 429 U.S. 24, 25-26 (1976) (stating that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision); *see also Matter of L-A-C-*, 26 I&N Dec. 516, n.7 (declining to reach alternative issues on appeal where an applicants do not otherwise meet their burden of proof).

[15] As the Petitioner has not established his extraordinary ability under section 203(b)(1)(A)(i) of the Act, we need not consider the Director's determination on whether the Petitioner intends to continue to work in his area of expertise under section 203(b)(1)(A)(ii) of the Act. Accordingly, we reserve this issue. *See Bagamasbad*, 429 at 25-6-26; *see also L-A-C-*, 26 I&N Dec. at 516, n.7.

ORDER: The appeal is dismissed.